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5 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 DOMINGO GERMAN MACAVILCA,

8 Plaintiff,

9 v.

10 EDWARD R. KANDLER, *et al.*,

11 Defendants.

Case No. C08-5312 FDB/KLS

ORDER ADOPTING REPORT AND
RECOMMENDATION

12 The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L.
13 Strombom, objections to the Report and Recommendation, if any, and the remaining record, does
14 hereby find and ORDER:

- 15 (1) The Court adopts the Report and Recommendation;
- 16 (2) This action is **DISMISSED without prejudice** prior to service for failure to state a
17 claim. **This dismissal counts as a strike pursuant to 28 U.S.C. § 1515(g);** and
- 18 (3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for any
19 Defendants who have appeared, and to the Hon. Karen L. Strombom.

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21 DATED this 1st day of December 2008.

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23 FRANKLIN D. BURGESS
24 UNITED STATES DISTRICT JUDGE
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